

West Virginia Fire Commission Response to Comments of Fire Code 87-01

BACKGROUND

The Fire Commission has been given authority to promulgate this Rule, pursuant to West Virginia Code 15A-11-3.

The proposed rule was reviewed, and revisions made, prior to the initial filing with the Secretary of State for comment.

During the public comment period, the Fire Commission received written comments from three individuals, each was considered by the Marshal. The response is outlined as follows

- 1) The Fire Marshal submitted comments regarding technical clean up provisions.
Answer: The Commission has voted to accept the proposed changes.
- 2) Brandolyn Felton Ernest submitted comments asking that the hearing and appeal process be consistent with Code.
Answer: The Commission voted to accept the proposed change.
- 3) NFPA Regional Director Gregory Cade submitted a technical comment which was the same as one of the Fire marshal's comment for technical cleanup.
- 4) Jennifer Greenlief of WV Dept. of Agriculture submitted comments regarding exemption of property and buildings used for agricultural purposes provisions.

Answer: The Commission has voted to accept the proposed changes.

Technical clean-up was made to the Rule.

This summarizes the topics upon which comments were made to the West Virginia State Fire Commission on the topic of the proposed rule, Fire Code, 87-01.

From: Tyree, Kenneth E.
To: Burns, Kathya L.
Cc: Nowicki, Stacy L.
Subject: Title 87, Series 1- State Fire Code Public Comments
Date: Wednesday, June 30, 2021 3:38:15 PM

The following is a comment and recommended removal from proposed State fire Code Appendix:

~~NEPA-120, Standard for Fire Prevention and Control in Coal Mines, 2015 edition.~~

This recommendation is based on previous exemption out of State Fire Code.

Respectfully,

Kenneth E. Tyree Jr.

State Fire Marshal

West Virginia State Fire Marshal's Office

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Challenges build character; anyone can hold the helm when the sea is calm.

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From: Tyree, Kenneth E.
To: Burns, Kathryn L.
Cc: Nasrckl, Stacy L.
Subject: RE: Title 87, Series 1- State Fire Code Public Comments
Date: Thursday, July 1, 2021 11:17:00 AM

The following is a need edit to the particular section:

2.2.n.2.L. Electrical systems shall meet the National Electrical Code.

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From: Tyree, Kenneth E
To: Burns, Kathryn L
Subject: FW: Title 87, Series 1 - Fire Code
Date: Tuesday, June 29, 2021 3:00:46 PM

From: Felton Ernest, Brandolyn <Brandolyn.FeltonErnest@wv.gov>
Sent: Tuesday, June 29, 2021 2:51 PM
To: Tyree, Kenneth E <Kenneth.E.Tyree@wv.gov>
Cc: Nowicki, Stacy L <Stacy.L.Nowicki@wv.gov>
Subject: Title 87, Series 1 - Fire Code

Good afternoon,

The section, 87-1-17, in regards to hearings conflicts with W.Va. Code 15A-9-1. et seq.
Please let me know if I can be of any further assistance.
Thank you in advance for your attention to this matter.

Brandolyn N. Felton-Ernest, Esq.
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Burns, Kathryn L

From: Cade, Gregory <GCade@nfpa.org>
Sent: Wednesday, June 30, 2021 1:59 PM
To: Tyree, Kenneth E; Burns, Kathryn L
Cc: Nowicki, Stacy L
Subject: [External] RE: Title 87, Series 14- State Building Code Public Comments # 2

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I apologize for not also catching the same issue in 87CR51 2.2.n.2.L. I guess it can be handled in the Public Comments.

From: Tyree, Kenneth E <Kenneth.E.Tyree@wv.gov>
Sent: Wednesday, June 30, 2021 12:09 PM
To: Burns, Kathryn L <Kathryn.L.Burns@wv.gov>
Cc: Nowicki, Stacy L <Stacy.L.Nowicki@wv.gov>
Subject: RE: Title 87, Series 14- State Building Code Public Comments # 2

The following comment should address correcting a grammatical concern within Section 4.1.1 of the State Building Code:

4.1.1. The ~~2017~~ 2020 edition of the National Electrical Code, NFPA 70, with the following exception:

This should read "Electrical" instead of Electric as currently noted within the above proposed changes.

Sincerely,

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From: **Greenlief, Jennifer** <jgreenlief@wvda.us>
Date: Tue, Jul 20, 2021 at 12:45 PM
Subject: Fire/Building Code Amendments - WVDA thoughts
To: Nowicki, Stacy L <Stacy.L.Nowicki@wv.gov>

Stacy,

I've taken some time to review the Fire and Building Code rules currently out for public comment. Here are my suggestions.

Fire Code

In Section 1.6., the exemption should be expanded. While the agritourism exemption is certainly applicable based on W. Va. Code 19-36-5(a), HB2823 goes further. Specifically, HB2823 grants an exemption from Building and Fire Code for all structures used "primarily" for agricultural purposes. To that end, I would suggest modifying 1.6 as follows:

1.6. Exemption -- This State Fire Code has no application to personal care homes caring for three or less patients or buildings used wholly as dwelling houses for no more than two families and has no application to ~~farm buildings or structures used primarily for agricultural purposes, including agritourism purposes.~~ Provided; however, that farm structures (1) used for group sleeping accommodations for farm workers or (2) used for educational, health care, assembly or detention/correctional occupancy are not exempt from the requirements of this State Fire Code.

Additionally, I propose the following language for the legislative rule concerning the applicability of the exemption. I placed it at Section 18, but am not particularly wed to that. I'm also not sure how the exemption normally works -- do people apply for it prospectively, or after the fact once the Fire Marshal does an inspection? I'll need your insight on that. But here's a first stab:

87-1-18. Exemption for agricultural purposes.

18.1. If a property owner or other responsible party claims exemption from the State Fire Code based on the agricultural purposes exemption identified in section 1.6 of this rule, the question shall be submitted to the Commissioner of Agriculture for a determination of eligibility.

18.2. The property owner or responsible party shall submit to the Commissioner of Agriculture sufficient information to allow the Commissioner to determine the primary use of the property. This information shall include, but is not limited to, location of the property and buildings, types of agricultural use or uses, percentage or frequency of use, and any other information that the Commissioner requires to make a decision.

18.3. Upon making a determination, the Commissioner of Agriculture shall provide a copy of his or her determination to the property owner or responsible party, and to the State Fire Marshal.